IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 4130 OF 2004

Shri Jiten Sushil Choksey
and anr. ...Applicants.

V/s

Susheel Tejuja & anr. ...Respondents.

Ms. Sharmila V. Deshmukh for the applicants
Mr. D.P. Adsule, APP for the respondents.

CORAM: V.M.KANADE,J.

DATE: 3rd June, 2005

P.C.:

1. Heard the learned counsel for the applicants.

2. Applicants are challenging the order of issuance of process passed by the Metropolitan Magistrate, 6th Court, Mazgaon on a complaint filed under section 138 of the Negotiable Instruments Act by respondent No.1.

3. It is submitted by the learned counsel appearing on behalf of the applicants that the applicants - original accused Nos. 4 and 3 had resigned as directors prior to the issuance and dishonour of the cheque issued to the respondent No.1. He has relied on certified copy of form 32 in support of the said submission. It is submitted that there are no specific averments regarding the role played by the

present applicants and in the absence of specific averments that the applicants were in charge of and were responsible for the conduct of the affairs of the Company, the present complaint is liable to be quashed. It is submitted that applicant No.1 had resigned in the year 1988 and applicant No.2 resigned with effect from 1/4/1996. This submission is vehemently opposed by the learned Counsel appearing on behalf of respondent No.1. In his affidavit in reply, it is submitted that form 32 was filed with the Registrar of Companies as late as 8th August, 2000 and, therefore, applicant No.2 could not be discharged from the liabilities of the Company till 8th August, 2000. The learned counsel appearing on behalf of respondent No.1 relied upon the order of this court in Criminal Writ Petition No.1731 of 2003 passed by Her Ladyship Smt. V.K. Tahilramani wherein the Court had expressed a doubt regarding genuineness of form 32 produced in respect of applicant No.2.

4. Thus, it is not possible to accept the submissions made by the learned Counsel appearing on behalf of the applicants. The applicants will have to prove that they had resigned prior to the issuance and dishonour of the cheque in question in the trial court. All contentions raised in the present application are kept

open and which shall be decided by the trial court after evidence is adduced by both parties on merits and in accordance with law.

5. Criminal Application is accordingly dismissed.

V.M. KANADE, J.